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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| STANLEY R. TSUJI, | ) | No. 97-17152 |
| | ) | |
| Plaintiff-Appellant, | ) | D.C. No. CV-96-01069 (SPK) |
| | ) | |
| v. | ) | |
| | ) | |
| STATE OF HAWAII, | ) | |
| DEPARTMENT | ) | MEMORANDUM* |
| OF PUBLIC SAFETY, | ) | |
| | ) | FILED |
| Defendants-Appellees, | ) | OCT 26 1998 |
| | ) | CATHY A. |
| and | ) | CATTERSON, |
| JOHN DOES 1-100; | ) | CLERK, U.S. CRT. OF |
| JANE DOES 1-100 | ) | APP. |
| | ) | |
| Defendants. | ) | |
| | ) | |

Appeal from the United States District Court
for the District of Hawaii (Honolulu)
Samuel P. King, Senior District Judge, Presiding

Submitted October 20, 1998**

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4

Before: T.G. NELSON, KLEINFELD, and HAWKINS, Circuit Judges.

Stanley R. Tsuji appeals the district court's grant of summary judgment to defendants in his action alleging violation of his civil rights on the basis of disability and conspiracy arising under 42 U.S.C. subsections 1983, 12112, and 12132. We have jurisdiction pursuant to 28 U.S.C. subsection 1291. We review de novo district court agrants of summary judgment, see Jesinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994), and we affirm.

Tsuji contends that the district court erred by granting summary judgment defendants on his 42 U.S.C. subsection 1983 claims. This contention lacks merit. Under the Eleventh Amendment a state and its agencies are immune from suits brought in federal court whether the relief sought is money damages or an injunction. See Papasan v. Allain, 478 U.S. 265, 276 (1986).

Tsuji contends that the district court erred by granting summary judgment on his claim under the American with Disabilities Act, 42 U.S.C. subsections 12112(a), 12132. This contention lacks merit. Tsuji failed to establish a genuine issue of material fact regarding whether he was a "qualified individual with a disability." See 42 U.S.C.-subsection 12101(2).

Tsuji contends that the district court erred by dismissing his 42 U.S.C. subsection 1985 conspiracy claim. This contention lacks merit. Because Tsuji failed to allege an invidiously discriminatory, racial, or class-based animus, the district court properly dismissed his subsection 1985 claim. See Gerritsen v. De La Madrid Hurtado, 819 F.2d 1511, 1518 (9th Cir. 1987).

AFFIRMED.[1]

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[1] We decline to consider the remainder of Tsuji's contentions because they are raised for the first time on appeal. See Pacific Express, Inc. v. United Airlines, Inc., 959 F.2d-814, 819 (9th Cir. 1992).